

Cavert Acquisition Co., d/b/a Cavert Wire Company and United Mine Workers of America, AFL-CIO. Case 6-CA-26733

April 17, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge and amended charges filed on September 27, October 14 and 31, 1994, and February 15, 1995, the General Counsel of the National Labor Relations Board issued an amended complaint on February 15, 1995, against Cavert Acquisition Co., d/b/a Cavert Wire Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-10988. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On March 16, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. The same day, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with an office and place of business on Route 119, North Union Township, Pennsylvania, has been engaged in the manufacture and nonretail sale of steel wire.

On about August 23, 1994, the Respondent purchased the assets of Cavert Wire Company and continued the business of Cavert Wire Company in unchanged form under the name of Cavert Acquisition Co., d/b/a Cavert Wire Company.¹

During the 12-month period ending August 31, 1994, the Respondent, in conducting its business operations, purchased and received at its Route 119, North Union Township, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held December 21 and 22, 1993, the Union was certified on August 4, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including shift leaders, the billing clerk, the order clerk, and the operating supplies clerk, employed by the Respondent at its Route 119, North Union Township, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹The Respondent's answer denies "as stated" the allegation that the Respondent purchased the stock of Cavert Wire Company and continued the business of Cavert Wire Company in unchanged form under the name of Cavert Acquisition Co., d/b/a Cavert Wire Company, asserting that the Respondent purchased the assets rather than the stock of Cavert Wire Company. The General Counsel's motion does not dispute the Respondent's assertion that the Respondent purchased the assets rather than the stock, but contends that the Respondent by its answer has nevertheless effectively admitted that it has purchased and continued the business of Cavert Wire Company in unchanged form. The Respondent has not disputed this contention in response to the Notice to Show Cause. We agree with the General Counsel and find that the Respondent has effectively admitted that it has purchased and continued the business of Cavert Wire Company in unchanged form. See Sec. 102.20 of the Board's Rules.

B. *Refusal to Bargain*

Since about September 27, 1994, the Respondent has refused the Union's timely request to bargain.² We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 27, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar- Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Cavert Acquisition Co., d/b/a Cavert Wire

² Although the Respondent's answer denies the complaint's allegation that the Union telephonically requested recognition by telephone about August 31 and September 7, 1994, it admits that the Union made a timely request for recognition. Although the Respondent's answer also "admits that prior to February 14, 1994, it failed to recognize the union," it appears that the Respondent intended to refer to February 14, 1995, because the complaint does not allege a refusal to bargain "prior to February 14, 1994." Further, a copy of its September 27, 1994 letter to the Union declining to bargain is attached to the General Counsel's motion, and the Respondent has not disputed the authenticity of that letter in response to the Notice to Show Cause. Although the Respondent's answer further avers that the Respondent has entered into a conditional recognition agreement with the Union, the Respondent acknowledges that this agreement is conditioned on the outcome of this proceeding. In addition, in the final paragraph of its answer, the Respondent "requests that Summary Judgment proceedings be initiated as quickly as possible to permit the underlying representation issue to be addressed by the United States Court of Appeals." In these circumstances, we find that the Respondent is refusing to bargain with the Union in order to test the Union's certification as alleged in the complaint and motion. See *Terrace Gardens Plaza*, 315 NLRB 749 (1994).

Company, North Union Township, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees, including shift leaders, the billing clerk, the order clerk, and the operating supplies clerk, employed by the Respondent at its Route 119, North Union Township, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Post at its facility in North Union Township, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the United Mine Workers of America, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees, including shift leaders, the billing clerk, the order clerk, and the operating supplies clerk, employed by us at our Route 119, North Union Township, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

CAVERT ACQUISITION CO., D/B/A
CAVERT WIRE COMPANY